

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF THE TOWN OF WESTPORT, DANE COUNTY WISCONSIN

These Comments are filed by the Town of Westport, Dane County Wisconsin (the "Town"), in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the Town believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

The Town of Westport is a Wisconsin Town with a population of 3,776. Our franchised cable provider is Charter Communications. Our community has previously negotiated cable franchises, with our latest franchise agreement in effect since 1999.

Our Current Franchise

Our current franchise began in 1999 and is 15 years in duration. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Town in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. The Town has not utilized its full allotment of these channels, and we are currently negotiating a Town government channel installation. Also, because the Town has two distinct CATV service areas, but with the same franchise holder, we are negotiating the broadcast of educational channels throughout the entire Town rather than to the separate areas. The franchise as not been cooperative in this regard.

Our franchise agreement and ordinance have several requirements for the operator. Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Our franchise contains the reasonable build schedule for the cable operator. Our franchise requires that the cable operator currently provide service to specific areas of our community. In order to ensure that our residents have access to current telecommunications technologies, our franchise contains rebuild and upgrade requirements. Our franchise contains appropriate insurance and bonding requirements. Our franchise agreement also provides for enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides how changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated. While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service. However, due to the concerns over competent and reasonable response to recent Town service requests, the Town will be actively seeking out competitive providers.

The Town has never denied any provider the opportunity to serve in our community, and our franchise is not exclusive. The Town also has mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local franchising process functions well in the Town of Westport. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. We also have mechanisms in place to provide for enforcement should there be a default on or violation of the franchise provisions.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest. We have enough government already.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Westport therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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